

8.110.51 FINANCIAL ELIGIBILITY REQUIREMENTS FOR INDIVIDUALS ELIGIBLE FOR THE COLORADO MEDICAID PROGRAM (Continued)

11. Promissory notes established before April 1, 2006

- a. The fair market value of a promissory note, mortgage, installment contract or similar instrument is an available countable resource.
- b. In order to determine the fair market value, the applicant shall obtain three estimates of fair market value from a private note broker, who is engaged in the business of purchasing such notes. In order to obtain the estimates and locate willing buyers, the note shall be advertised in a newspaper with state wide circulation under business or investment opportunities.
- c. A note or similar instrument which transferred funds or assets for less than fair market value shall be considered as a transfer without fair consideration and a period of ineligibility shall be imposed.

12. Promissory notes established on or after April 1, 2006

- a. The value of a promissory note, loan or mortgage is an available countable resource unless the note, loan or mortgage:
 - 1) Has a repayment term that is actuarially sound based on the individual's life expectancy as found in the tables in Section 8.110.56 for annuities purchased on or after February 8, 2006;
 - 2) Provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and
 - 3) Prohibits the cancellation of the balance upon the death of the lender.
- b. The value of a promissory note, loan or mortgage which does not meet the criteria in Section 8.110.51.B.12.a. is the outstanding balance due as of the date of the individual's application for HCBS, PACE or institutional services and is subject to the transfer without fair consideration provisions in Section 8.110.53.

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- D. Actions that prevent income or resources from being received, as set forth on the following list, which is not exclusive, shall create a rebuttable presumption that the transfer was without fair consideration:
1. Waiving pension income.
 2. Waiving a right to receive an inheritance.
 3. Preventing access to assets to which an individual is entitled by diverting them to a trust or similar device. This is not applicable to valid income trusts, disability trusts and pooled trusts for individuals under the age of 65 years.
 4. Failure of a surviving spouse to elect a share of a spouse's estate.
 5. Failure to obtain a family allowance or exempt property from an estate of a deceased spouse or parent.
 6. Not accepting or accessing a personal injury settlement.
 7. Transferring assets into an irrevocable private annuity which was not purchased from a commercial company.
 8. Transferring assets into an irrevocable entity such as a Family Limited Partnership which eliminates or restricts the individual's access to the assets.
 9. Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony, if the benefit outweighs the cost.
 10. Failure to exercise rights in a Dissolution of Marriage case, which insure an equitable distribution of marital property and income.
- E. Treatment of certain assets as transfers without fair consideration
1. Promissory notes established before April 1, 2006
 - a. The fair market value of promissory notes are a countable resource and must be evaluated in accordance with the regulations on consideration of resources in this volume.
 - b. Promissory notes with one or more of the following provisions, indicating they have little or no market value, shall create a rebuttable presumption of a transfer without fair consideration:
 - 1) An interest rate lower than the prevailing market rate.

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- 2) A term for repayment longer than the life expectancy of the holder of the note.
 - 3) Low payments.
 - 4) Cancellation at the death of the note holder.
- c. Promissory notes which have been appraised by a note broker as having little or no value shall create a rebuttable presumption of a transfer without fair consideration.
2. Promissory notes established on or after April 1, 2006
- a. Subject to the look-back date described in Section 8.110.53.B.4., for the purpose of calculating the penalty period of ineligibility for a transfer without fair consideration, the value of a promissory note, loan or mortgage which does not meet the criteria in Section 8.110.51.B.13.a.1.-3. is the outstanding balance due as of the date of the individual's application for medical assistance for services described in Section 8.110.53.B.5.
3. Personal care services
- a. Family members who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer without fair consideration unless the compensation is in accordance with the following:
 - 1) A written agreement must be executed prior to the delivery of services.
 - 2) The agreement must be signed by the applicant, or a legally authorized representative, such as agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative may not be a beneficiary of the agreement.
 - 3) The agreement must be dated and the signature must be notarized.
 - 4) Compensation for services rendered must be comparable to what is received in the open market.
 - b. Payment for services, which were rendered previously and for which no compensation was made, shall be considered as a transfer without fair consideration.

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- c. Assets transferred in exchange for a contract for personal services for future assistance provided by family members or by a professional after the date of application are considered available resources.
 - d. A family member may provide homemaking or caregiving services prior to the date of institutionalization and may be paid at the time of rendering the services a reasonable hourly rate comparable to the prevailing market rate without the necessity of a written contract.
4. Transfers of real property into joint tenancy without fair consideration
- a. If real property is transferred into joint tenancy with right of survivorship with one or more joint tenants, the amount transferred depends on the number of joint tenants to whom the property is transferred. The following are examples:
 - 1) If the transfer is to one joint tenant, the amount transferred is equal to one-half of the value of the property at the time of the transfer.
 - 2) If the transfer is to two joint tenants, the amount transferred is equal to two-thirds of the value.
 - 3) If the transfer is to three joint tenants, the amount transferred is equal to three-fourths of the value of the property at the time of the transfer.
 - b. If the transfer is completed with two deeds or transactions, the first of which transfers a fractional share of the property into tenancy in common, and the second into joint tenancy, the amount transferred shall be determined in the same manner as set forth above.
- F. No period of ineligibility will be imposed if the individual transferred the assets under any of following circumstances:
- 1. The asset transferred was a home and title to the home was transferred to:
 - a. The spouse of such individual;
 - b. A child of such individual who is either

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8.110.54 Treatment of Life Estates

- A. Effective July 1, 1995, for an applicant/recipient of Medicaid, and/or his/her spouse, who established a life estate on his/her residence, a transfer of assets without fair consideration may occur. A transfer of assets without fair consideration occurs when a life estate was established on the residence by the applicant/recipient of Medicaid, and/or their spouse, on or after the look-back date. However, in no event shall these regulations apply to a life estate established before July 1, 1995.

The amount to be considered as a transfer of assets without fair consideration shall be computed by using equity value of the property and applying it to the life estate table contained in these rules as follows:

1. Determine the equity value of the property at the time the life estate was established. The equity value of the residential property shall be determined by obtaining the actual value and subtracting encumbrances. The actual value shall be obtained by using the actual value reported by a county assessor or from the most recent property assessment notice. If the actual value is not shown on the property assessment notice, the assessed value shall be divided by the appropriate percentage value for residential property as established by state law to obtain the actual value.

Encumbrances include mortgages, liens, judgments, delinquent taxes, loan agreements, and other forms of indebtedness.

2. Multiply the equity value by the "Remainder" factor from the Life Estate Remainder Interest Table contained in these rules that corresponds to the person's age at the time the life estate was established. The result is the amount to be considered as a transfer of assets without fair consideration. When a life estate is established on the residence held by spouses in joint tenancy, the age of the youngest individual shall be used to calculate the amount of the transfer.

- B. Effective April 1, 2006, the purchase of a life estate interest in an individual's home is a transfer without fair consideration unless the purchaser resides in the home for a period of at least one year after the date of purchase.

Once the transfer of asset amount is computed, the penalty period for transfer of assets without fair consideration is determined by using the steps as explained in subsection "G" of this section.